IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.861 OF 2006

WITH

CIVIL APPLICATION NO.1197 OF 2006

Mr.Raman Bharadwaj & Anr. ...Appellants

Versus

M/s.Daffodils & Dreams Entertainment Pvt.Ltd. & Anr. ...Respondents

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Mr.Milind Vasudeo with Mr.Archit Jayakar and Ms.Megha Sen i/b M/s.Khaitan & Jayakar for Appellants.

Mr.Hasmukh Nandlal Shah for Respondent No.1.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 8, 2007.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Shah waives notice for Respondent No.1, who is the contesting party.

3. Counsel for the Respondent No.1 states

that notice to Respondent No.2 can be dispensed with for the purpose of the present Appeal.

4. Accordingly, by consent of parties, Appeal is heard forthwith.

5. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Mumbai dated 29th November 2006 in Arbitration Petition No.1 of 2006 granting ad-interim relief in favour of the Respondent No.1/Petitioners.

6. The sole question that arises for consideration in this Appeal is: whether the Trial Court could have proceeded to grant ad-interim relief without considering the issue of jurisdiction of that Court to try and entertain the Arbitration Petition which was specifically raised on behalf of the Appellants before that Court. Reliance is placed on the decision of this Court in the case of **Khetan Industries Pvt.Ltd. & Ors. v. Manju Ravindraprasad Khetan reported in AIR 1995 Bom.43** as well as in the case of **Chatrabhuj Mavji**

Merchant v. Sumati Morarjee & Ors. reported in 1992 Mh.L.J. 1075 to buttress the above submission. There is substance in the grievance made on behalf of the Appellant that the Trial Court has not considered this crucial aspect of the matter before proceeding to grant the ad-interim relief in favour of the Respondent No.1/Petitioners. Instead of considering the said contention for the first time in this Appeal, in my opinion, it will be appropriate to relegate the parties before the Trial Court, which in turn, shall frame preliminary issue on the point of jurisdiction - as is agreed by the Counsel appearing for the contesting parties before this Court. The Trial Court shall first record positive finding on the said issue and only thereafter proceed to consider the matter pending before it any further. Accordingly, impugned Judgment and Order is set-aside with observation that the parties are relegated before the Trial Court for deciding preliminary issue of jurisdiction of that Court to try and entertain Arbitration Petition filed by the Respondent No.1/Petitioners.

7. The preliminary issue be answered by the Trial Court within two weeks from the receipt of writ of this Court or on 29th January 2007 when the matter is already notified before it for further hearing as may be advised.

8. Needless to observe that I have not expressed any opinion on the correctness of the stand taken by the Appellants on the point in issue. That aspect is left open to be answered by the Trial Court on its own merits in accordance with law. Both parties, through their Counsel agree that they will extend full cooperation to the Trial Court for early decision on the point of jurisdiction as aforesaid.

9. Status-quo be maintained by the parties as of today till 29th January 2007.

A.M.KHANWILKAR, J.